



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2015-0786]

RIN 1625-AA11

Regulated Navigation Area; Columbus Day Weekend, New Year's Eve Events, and Fourth of July Events; Biscayne Bay, Miami, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes amending the Columbus Day weekend regulated navigation area on Biscayne Bay in Miami, Florida. The proposed amended regulation extends the Biscayne Bay regulated navigation enforcement period to New Year's Eve and Fourth of July events. It also expands the boundaries of the regulated navigation area south to Turkey Point, east to Elliott Key, west to the shoreline, and north to the Julia Tuttle Causeway. These regulations are necessary to protect the public during Columbus Day weekend, New Year's Eve events, and Fourth of July events; periods that have historically had a significant concentration of persons and vessels on the waters of Biscayne Bay. To ensure the public's safety, all vessels within the regulated navigation area are: required to transit the regulated navigation area at no more than 15 knots; subject to control by the Coast Guard; and required to follow the instructions of all law enforcement vessels in the area. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2015-0786 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Petty Officer Benjamin R. Colbert, Waterways Management Division, U.S. Coast Guard; telephone 305-535-4317, email Benjamin.R.Colbert@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
E.O.	Executive order
FR	<i>Federal Register</i>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

Recreational boating traffic on the waters of Biscayne Bay increases significantly during Columbus Day, New Year’s Eve, and Fourth of July events. In recent years, recreational vessel speed, especially in crossing navigational channels, contributed to incidents that resulted in severe injury and death. This proposed regulation seeks to increase public safety on the waters of Biscayne Bay during holidays known for increased vessel traffic by requiring vessels to travel at a maximum speed of 15 knots. It

also subjects recreational vessels to the control by Coast Guard and local law enforcement authorities.

The legal basis for this proposed rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

The purpose of the proposed rule is to ensure the safe transit of vessels and to protect persons, vessels, and the marine environment within the regulated navigation area during the Columbus Day weekend, New Year's Eve, and the Fourth of July.

III. Discussion of Proposed Rule

The District Commander for the Coast Guard's Seventh District proposes to establish a regulated navigational area in the Biscayne Bay from noon on the Saturday preceding Columbus Day to 2 a.m. on Columbus Day; from 9 p.m. December 31st until 2 a.m. January 1st; and from 7 p.m. until 2 a.m. on the night Fourth of July fireworks are scheduled in Downtown Miami and Key Biscayne. This regulated navigation area would encompass waters of the Biscayne Bay between Julia Tuttle Causeway Bridge and Turkey Point in Homestead, Florida.

All vessels within the proposed regulated navigation area are: (1) required to transit the regulated navigation area at no more than 15 knots; (2) subject to control by the Coast Guard; and (3) required to follow the instructions of all law enforcement vessels in the area.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and

executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a “significant regulatory action,” under E.O. 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

The economic impact of this rule is not significant. For the following reasons: (1) the regulated navigation area will be enforced for less than 2 days each year for Columbus Day events and less for New Year’s Eve and Fourth of July events; (2) although, during the enforcement period, vessels are required to transit the area at no more than 15 knots, are subject to control by the Coast Guard, and are required to follow the instructions of all law enforcement vessels in the area, the regulated navigation area does not prohibit vessels from transiting the area; (3) during the enforcement period, vessels will be able to operate in waters that are not encompassed within the regulated navigation area without the restrictions imposed by the regulated navigation area; and (4) advance notification will be made to the local maritime community via Local Notice to Mariners and Broadcast Notice to Mariners.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated navigation area may be small entities, for the reasons stated in Section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this proposed rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in

such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves establishing a regulated navigation area which will be enforced for less than 48 hours. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of Commandant Instruction M16475.ID. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or

recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the Federal Register (70 FR 15086).

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for 33 CFR part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Revise §165.779 to read as follows:

§ 165.779 Regulated Navigation Area; Columbus Day Weekend, New Year's Eve Events, and Fourth of July Events; Biscayne Bay, Miami, FL.

(a) Regulated area. The regulated navigation area encompasses all waters of Biscayne Bay between Julia Tuttle and Turkey Point contained within the following points: beginning at Point 1 in position 25°48'43"N, 80°08'29"W; thence south to Point 2 in position 25°29'07"N, 80°10'44"W; thence southwest to Point 3 in position 25°25'51"N, 80°12'00"W; thence west to Point 4 in position 25°25'51"N, 80°19'42"W; thence north to Point 5 in position 25°29'10"N, 80°20'58"W; thence northwest to Point 6 in position 25°37'35"N, 80°18'28"W; thence northwest to Point 7 in position 25°48'44"N, 80°11'17"W; thence back to origin. All coordinates are North American Datum 1983.

(b) Definition. The term "designated representative" means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Miami in the enforcement of the regulated area.

(c) Regulations. All vessels within the regulated area are required to transit at no more than 15 knots, are subject to control by the Coast Guard, and must follow the instructions of designated representatives.

(d) Enforcement period. (1) This section will be in enforced annually on Columbus Day weekend, starting at noon on the Saturday before Columbus Day through 2 a.m. on Monday (the Columbus Day holiday); from 9 p.m. December 31st until 2 a.m. January 1st; and from 7 p.m. until 2 a.m. on the night Fourth of July fireworks are

scheduled in Downtown Miami and Key Biscayne.

(2) Columbus Day is the federally recognized holiday occurring annually on the second Monday in October.

Dated: November 13, 2015.

S. A. Buschman,

Rear Admiral, U.S. Coast Guard,

Commander, Seventh Coast Guard District.

[FR Doc. 2015-29533 Filed: 11/19/2015 8:45 am; Publication Date: 11/20/2015]